

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	CHANGE OF NAME

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
ServiceBench, Inc.		12/16/2011	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	ServiceBench, LLC
Street Address:	22894 Pacific Boulevard
City:	Sterling
State/Country:	VIRGINIA
Postal Code:	20166
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE

PROPERTY NUMBERS Total: 4

Property Type	Number	Word Mark
Registration Number:	3816726	SERVICEBENCH
Registration Number:	2901988	SERVICEBENCH
Registration Number:	3816731	SERVICEBENCH
Registration Number:	3962900	SERVICEBENCH MOBILE

CORRESPONDENCE DATA

Fax Number: (302)636-5454
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.

Phone: 800-927-9801 x2348
 Email: jpaterso@cscinfo.com
 Correspondent Name: Corporation Service Company
 Address Line 1: 1090 Vermont Avenue NW, Suite 430
 Address Line 4: Washington, DISTRICT OF COLUMBIA 20005

ATTORNEY DOCKET NUMBER:	167171-5
NAME OF SUBMITTER:	Jean Paterson

CH \$115.00 3816726

Signature:	/jep/
Date:	04/12/2012

Total Attachments: 44

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Delaware

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The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS FILED FROM AND INCLUDING THE RESTATED CERTIFICATE OR A MERGER WITH A RESTATED CERTIFICATE ATTACHED OF "SERVICEBENCH, LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

RESTATED CERTIFICATE, FILED THE TWENTY-FIFTH DAY OF MAY, A.D. 2006, AT 6:09 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE FIFTEENTH DAY OF JANUARY, A.D. 2008, AT 11:21 O'CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE FIFTEENTH DAY OF JANUARY, A.D. 2008, AT 1:03 O'CLOCK P.M.

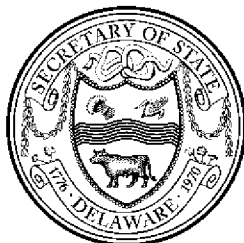
CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE TWENTY-FIFTH DAY OF FEBRUARY, A.D. 2009, AT 4:43 O'CLOCK P.M.

CERTIFICATE OF CONVERSION, CHANGING ITS NAME FROM "SERVICEBENCH, INC." TO "SERVICEBENCH, LLC", FILED THE NINETEENTH DAY OF DECEMBER, A.D. 2011, AT 12:17 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CONVERSION IS THE FIRST DAY OF JANUARY, A.D. 2012, AT 12:01 O'CLOCK A.M.

3212940 8100X

120290123




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9418323

DATE: 03-08-12

You may verify this certificate online
at corp.delaware.gov/authver.shtml

TRADEMARK
REEL: 004755 FRAME: 0918

Delaware

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The First State

CERTIFICATE OF FORMATION, FILED THE NINETEENTH DAY OF
DECEMBER, A.D. 2011, AT 12:17 O'CLOCK P.M.


AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF FORMATION IS THE FIRST DAY OF
JANUARY, A.D. 2012, AT 12:01 O'CLOCK A.M.



3212940 8100X

120290123

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9418323

DATE: 03-08-12

TRADEMARK
REEL: 004755 FRAME: 0919

**THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SERVICEBENCH, INC.**

Pursuant to Section 242
of the Delaware General Corporation Law

ServiceBench, Inc. (hereinafter called the "Corporation"), organized and existing under and by virtue of the Delaware General Corporation Law, does hereby certify as follows:

The Corporation was duly formed by filing a Certificate of Incorporation of the Corporation, originally filed with the Secretary of State of Delaware on April 14, 2000 under the name ServiceBench.com, Inc. and declaring said amendment to be advisable. On November 6, 2001, the Corporation filed an Amended and Restated Certificate of Incorporation which, among other things, changed the name of the Corporation to ServiceBench, Inc. On February 20, 2004, the Corporation filed the Second Amended and Restated Certificate of Incorporation. This Third Amended and Restated Certificate of Incorporation of the Corporation in the form as hereinafter set forth has been duly adopted by the written consent of the board of directors in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of the stockholders of the Corporation in accordance with the provisions of Section 228 and 242 of the General Corporation Law of the State of Delaware. The resolution setting forth the amendment is as follows:

FIRST: The name of the Corporation is ServiceBench, Inc.

SECOND: The address of the Corporation's registered office in this state is 222 Delaware Avenue, Suite 1200, Wilmington, Delaware 19801 in the county of New Castle. The name of the Corporation's registered agent at that office is ATA Corporate Services, Inc.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 203,742,103 shares, consisting of (i) 120,000,000 shares of Common Stock, \$0.005 par value (hereinafter referred to as "Common Stock") and (ii) 83,742,103 shares of Preferred Stock, \$0.005 par value per share (hereinafter referred to as "Preferred Stock"), of which (A) 10,484,117 shares are designated "Series A Preferred Stock" ("Series A Preferred"), (B) 26,508,628 shares are designated "Series B Preferred Stock" ("Series B Preferred"), (C) and 16,749,358 shares of which are designated "Series C Preferred Stock" ("Series C Preferred") and (D) 30,000,000 shares of which are designated "Series D Preferred Stock" ("Series D Preferred").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting. Subject to Section 8 under Section B below, the holders of Common Stock are entitled to one vote for each share held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. Except as may be otherwise provided in this certificate of incorporation or by law, the Common Stock shall vote together with all other classes and series of stock of the Corporation (including the Preferred Stock) as a single class on all actions to be taken by the stockholders of the Corporation. Notwithstanding anything to the contrary contained herein, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding or reserved for the exercise of options or warrants or conversion of the Preferred Stock) by the affirmative vote of the holders of a majority of the capital stock of the Corporation entitled to vote, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential rights of any then outstanding Preferred Stock.

B. PREFERRED STOCK.

1. Issuance. Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation (the "Board of Directors") as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law or by the terms of any series of Preferred Stock. To the extent permitted by law, different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided by law or this certificate of incorporation.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the

creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, special voting rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the Delaware General Corporation Law. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise specifically provided by law, by this certificate of incorporation or by contract, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this certificate of incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation.

2. Dividend Provisions.

(a) The Corporation shall not declare, pay or set aside any dividends on any shares of capital stock of the Corporation (other than dividends on shares of Common Stock payable solely in shares of Common Stock) unless the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to (i) the amount of the aggregate Accruing Dividends (as such term is defined below) then accrued on such share of Preferred Stock and not previously paid plus (ii) (A) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (1) the dividend payable on each share of such class or series determined, if applicable, as if all such shares of such class or series had been converted into Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend, or (B) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per such share of Preferred Stock determined by dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock and multiplying such fraction by an amount equal to the Liquidation Preference applicable on such share of Preferred Stock.

(b) In addition to the dividends required to be paid to the holders of Series B Preferred pursuant to Section 2(a), the holders of shares of Series B Preferred shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors, dividends of \$0.0102211 per share per annum (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) from the original issue date of each such share (the "Series B Accruing Dividends"). The Series B Accruing Dividends shall

accrue from day to day, whether or not earned or declared, from the date of issuance of each share of Series B Preferred Stock.

(c) In addition to the dividends required to be paid to the holders of Series C Preferred pursuant to Section 2(a), the holders of shares of Series C Preferred shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors, dividends at the rate of eight percent (8%) of the Series C Liquidation Preference (as defined in Section 3(b) below) per share per annum compounded annually from the original issue date, of each such share (the "Series C Accruing Dividends"). Such dividends shall accrue from day to day, whether or not earned or declared, and shall be cumulative from the date of issuance of each share of Series C Preferred Stock, whether or not declared.

(d) In addition to the dividends required to be paid to the holders of Series D Preferred pursuant to Section 2(a), the holders of shares of Series D Preferred shall be entitled to receive, out of funds legally available therefor, when and if declared by the Board of Directors, dividends at the rate of eight percent (8%) of the Series D Liquidation Preference (as defined in Section 3(a) below) per share per annum compounded annually from the Original Issue Date, as defined in Section 6(d) below, of such shares (the "Series D Accruing Dividends," and together with the Series B Accruing Dividends and the Series C Accruing Dividends, the "Accruing Dividends"). Such dividends shall accrue from day to day, whether or not earned or declared, and shall be cumulative from the date of issuance of each share of Series D Preferred Stock, whether or not declared.

(e) No Accruing Dividends shall be paid on any series of Preferred Stock unless Accruing Dividends are paid on all series of Preferred Stock entitled to Accruing Dividends, ratably in proportion to the amount accrued to each such share of Preferred Stock; *provided, however*, that this Section 2(e) shall not apply to any distributions made pursuant to the provisions set forth in Section 3 below in connection with a Liquidation Event.

3. Liquidation.

(a) Series D Preference. In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (a "Liquidation Event"), each holder of Series D Preferred shall be entitled to receive in respect of each share of Series D Preferred then held by such holder, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series C Preferred, Series B Preferred, Series A Preferred or Common Stock or any other capital stock ranking on liquidation junior to the Series D Preferred by reason of their ownership thereof, an amount equal to (i) \$0.2525653 (the "Series D Liquidation Preference") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus (ii) an amount equal to all accrued and unpaid Series D Accruing Dividends plus any declared and unpaid dividends thereon, computed to the date payment thereof is made available. If, upon the occurrence

of such event, the assets and funds thus distributed among the holders of the Series D Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series D Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(b) Series C Preference. In the event of a Liquidation Event, following payment to the holders of Series D Preferred of the full amount to which they are entitled pursuant to Section 3(a) above, each holder of Series C Preferred shall be entitled to receive in respect of each share of Series C Preferred then held by such holder, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series B Preferred, Series A Preferred or Common Stock or any other capital stock ranking on liquidation junior to the Series C Preferred by reason of their ownership thereof, an amount equal to (i) \$0.1910521 (the "Series C Liquidation Preference") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus (ii) an amount equal to all accrued and unpaid Series C Accruing Dividends plus any declared and unpaid dividends thereon, computed to the date payment thereof is made available. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series C Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(c) Series B Preference. In the event of a Liquidation Event, following payment to the holders of Series D Preferred of the full amount to which they are entitled pursuant to Section 3(a) above, and following the payment to the holders of Series C Preferred of the full amount to which they are entitled pursuant to Section 3(b) above, each holder of Series B Preferred shall be entitled to receive in respect of each share of Series B Preferred then held by such holder, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Series A Preferred or Common Stock or any other capital stock ranking on liquidation junior to the Series B Preferred by reason of their ownership thereof, an amount equal to (i) \$0.1277647 (the "Series B Liquidation Preference") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), plus (ii) an amount equal to eight percent (8%) of the Series B Liquidation Preference per annum compounded annually from the date of issuance of each such share of Series B Preferred Stock, to the extent dividends pursuant to Section 2(b) above have not been paid, plus any declared and unpaid dividends thereon, computed to the date payment thereof is made available. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series B Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(d) Series A Preference. In the event of a Liquidation Event, following payment to the holders of Series D Preferred of the full amount to which they are entitled pursuant to Section 3(a) above, following the payment to the holders of Series C Preferred of the full amount to which they are entitled pursuant to Section 3(b) above and following the payment to the holders of Series B Preferred of the full amount to which they are entitled pursuant to Section 3(c) above, each holder of Series A Preferred shall be entitled to receive in respect of each share of Series A Preferred then held by such holder, prior and in preference to any distribution of any of the assets of the Corporation to the holders of Common Stock or any other capital stock ranking on liquidation junior to the Series A Preferred Stock by reason of their ownership thereof, an amount equal to (i) \$0.2519685 (the "Series A Liquidation Preference," and, generically with the Series B Liquidation Preference, the Series C Liquidation Preference, and the Series D Liquidation Preference, the applicable "Liquidation Preference") (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares) plus (ii) an amount equal to eight percent (8%) of the Series A Liquidation Preference per annum compounded annually from the date of issuance of each such share of Series A Preferred Stock, plus any declared and unpaid dividends thereon, computed to the date payment thereof is made available. If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred are insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably among the holders of the Series A Preferred in proportion to the preferential amount each such holder is otherwise entitled to receive.

(e) Remaining Assets. Upon the completion of the distributions required by Sections 3(a), 3(b), 3(c) and 3(d) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Series D Preferred, Series C Preferred, Series B Preferred, Series A Preferred and Common Stock pro rata based on the number of shares of Common Stock held by each such holder or the number of shares of Common Stock into which the shares of Series D Preferred, Series C Preferred, Series B Preferred and Series A Preferred held by each such holder are convertible.

(f) Certain Acquisitions.

(i) Deemed Liquidation. For purposes of this Section 3, a Liquidation Event shall be deemed to occur (a "Deemed Liquidation") if: (A) the Corporation shall sell, lease, exclusively license, transfer, convey, or otherwise dispose of or encumber, other than for capital leases, all or substantially all of its assets, property or business or (B) the Corporation or its stockholders shall effect any merger, consolidation, other transaction or series of related transactions of which results in any person or group of persons (as the term "group" is used under the Securities Exchange Act of 1934, as amended), other than the holders of Common Stock and Preferred Stock immediately prior to such transaction or transactions, owning immediately after such transaction or transactions capital stock of the Corporation representing over 50% of the voting power of the then outstanding voting capital stock of the Corporation entitled to vote generally

in the election of the directors of the Corporation, provided that this Section 3(f)(i) shall not apply to (x) a merger effected exclusively for the purpose of changing the domicile of the Corporation, or (y) to an issuance of Common Stock or Preferred Stock for bona fide equity financing purposes in which cash is received by the Company or indebtedness of the Company is cancelled or converted or a combination thereof.

(ii) Valuation of Consideration. In the event of a Deemed Liquidation as described in Section 3(f)(i) above, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability:

(I) If traded on a securities exchange or the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the thirty-day period ending three (3) days prior to the closing;

(II) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty-day period ending three (3) days prior to the closing; and

(III) If there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors, including the Directors elected exclusively by the holders of Preferred Stock.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in Section 3(f)(ii)(A) to reflect the approximate fair market value thereof, as determined by the Board of Directors in good faith.

(iii) Notice of Transaction. The Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and a summary of the material provisions of this Section 3, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after the Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that represent at least a majority

of the voting power of all then outstanding shares of such Preferred Stock, voting together as a single class.

(iv) Agreement Requirements. In the event of a Deemed Liquidation as described in Section 3(f)(i) above, all consideration payable to the stockholders of the Corporation, in connection with a merger, consolidation or stock sale or transfer, or all consideration payable to the Corporation, together with all other available assets of the Corporation (net of obligations owed by the Corporation), in the case of an asset sale, shall be paid to and deemed (to the fullest extent permitted by law) distributed (in the case of a merger or consolidation) or available for distribution and payment as provided herein (in the case of a sale of assets), as applicable, to the holders of capital stock of the Corporation in accordance with the preferences and priorities set forth in this Section 3, with such preferences and priorities specifically intended to be applicable in any such merger, consolidation or sale transaction as if the same were a liquidation, dissolution or winding up. As applicable, the Corporation shall either (A) cause the agreement and plan of merger or consolidation to provide as a consequence of such merger or consolidation for the conversion of the Preferred Stock into the right to receive an amount (either in cash, or, at the option of the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock, voting together as a single class, in the case of a merger or consolidation for stock, stock of the surviving corporation or the parent corporation of the surviving corporation, if any) equal to the applicable amount payable under this Section 3; or (B) immediately concurrent with the consummation of the sale or transfer by the Corporation's stockholders of outstanding shares of capital stock or the sale of all or substantially all of the assets of the Corporation, the redemption of all outstanding shares of the Preferred Stock for an amount (either in cash, or, at the option of the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock, voting together as a single class, stock of the surviving corporation or the parent corporation of the acquiring corporation, if any) equal to the applicable amount payable under this Section 3. In the event of the foregoing redemption, (x) the Corporation shall revalue its assets and liabilities to the fullest extent permitted by law to determine lawfully available funds for such redemption, and (y) if the Corporation shall not have such funds available to redeem all such shares, the Corporation shall redeem such shares to the fullest extent of available funds as the same became available.

(v) Effect of Noncompliance. In the event the requirements of this Section 3(f) are not complied with and such non-compliance is not waived by the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock, voting together as a single class, the Corporation shall forthwith either cause the closing of the transaction to be postponed until such requirements have been complied with, or cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section 3(d)(iii) hereof.

4. Redemption.

(a) At any time after December 31, 2010, provided at least forty-five (45) days' written notice (the "Election Notice") has been given to the Corporation and the holders of Preferred Stock not so electing (the "Other Holders"), the holders (the "Electing Holders") of not less than a majority of the voting power of all then outstanding shares of Preferred Stock, voting together as a single class, may elect that the Preferred Stock held by such Electing Holders be redeemed. Within twenty (20) days of the receipt of the Election Notice, each Other Holder may elect to have all or a portion of the Preferred Stock held by each such Other Holder redeemed at the same time as the Preferred Stock held by the Electing Holders. The Corporation shall, from funds legally available therefor, redeem all outstanding shares of Preferred Stock electing to be redeemed on the date specified in the Election Notice or otherwise specified herein (each a "Redemption Date") by paying in respect of each such share to be redeemed an amount in cash equal to the greater of (i) the sum of (A) the Liquidation Preference for the applicable series of Preferred Stock being redeemed, plus (B) in the case of the Series C Preferred or Series D Preferred, an amount equal to all Accruing Dividends for the applicable series of Preferred Stock being redeemed, and in the case of the Series A Preferred or Series B Preferred an amount equal to eight percent (8%) of such Liquidation Preference per annum (compounded annually) from the date of issuance of each such share for the applicable series of Preferred Stock being redeemed, until, in each case, the applicable Redemption Date and only to the extent dividends pursuant to Section 2(b), 2(c), or 2(d) above have not been paid, plus any declared and unpaid dividends, or (ii) the Fair Market Value (as determined pursuant to subsections 4(d) and 4(e) below) of such shares (the price determined pursuant to clauses (i) or (ii), as the case may be, is referred to herein as the "Redemption Price"), in exchange for each share of Preferred Stock to be redeemed (as adjusted for any stock dividends, combinations or splits with respect to such shares).

(b) At least fifteen (15) but no more than thirty (30) days prior to each Redemption Date, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on which notice is given) of the shares of Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares to be redeemed (the "Redemption Notice"). Except as provided in subsection (c), on or after each Redemption Date, each holder of shares of Preferred Stock to be redeemed shall surrender to the Corporation the certificate or certificates representing such shares, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be paid to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(c) From and after the applicable Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Corporation is not able to pay the Redemption Price due to not having sufficient legally available funds (each a "Redemption Default"), all rights of the holders of shares of Preferred Stock designated for redemption in the Redemption Notice for redemption as of the applicable Redemption Date as holders of shares of Preferred Stock (except the right to receive the Redemption Price without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever. In the event of a Redemption Default that is not cured for a period of 90 days, the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock, voting together as a single class, shall be entitled to elect either or both of the following remedies (i) notwithstanding the provisions of Section 8(b) hereof the size of the Board of Directors shall be increased such that such holders may elect the smallest number of additional directors as is necessary such that such holders shall be entitled to elect a majority of the Board of Directors, or (ii) cause a Sale of the Corporation in accordance with Section 5 below. In addition, those funds which are legally available will be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed as follows: (w) the Corporation shall first redeem all shares of Series D Preferred to be redeemed on the applicable Redemption Date, except that, if the funds of the Corporation legally available for redemption of shares of Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series D Preferred to be redeemed on the applicable Redemption Date, the holders of shares of Series D Preferred shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on the applicable Redemption Date were actually redeemed; (x) after the redemption in full of the Series D Preferred to be redeemed on the applicable Redemption Date, the Corporation shall next redeem all shares of Series C Preferred to be redeemed on the applicable Redemption Date, except that, if the funds of the Corporation legally available for redemption of shares of Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series C Preferred to be redeemed on the applicable Redemption Date, the holders of shares of Series C Preferred shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on the applicable Redemption Date were actually redeemed, (y) after the redemption in full of the Series D Preferred and Series C Preferred to be redeemed on the applicable Redemption Date, the Corporation shall next redeem all shares of Series B Preferred to be redeemed on the applicable Redemption Date, except that, if the funds of the Corporation legally available for redemption of shares of Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series B Preferred to be redeemed on the applicable Redemption Date, the holders of shares of Series B Preferred shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on the applicable Redemption Date were actually redeemed; and (z) after the redemption in full of the Series D Preferred, Series C Preferred, and Series B Preferred to be redeemed on the

applicable Redemption Date, the Corporation shall next redeem all shares of Series A Preferred to be redeemed on the applicable Redemption Date, except that, if the funds of the Corporation legally available for redemption of shares of Preferred Stock on a Redemption Date are insufficient to redeem the total number of shares of Series A Preferred to be redeemed on the applicable Redemption Date, the holders of shares of Series A Preferred shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable to them if the full number of shares to be redeemed on the applicable Redemption Date were actually redeemed. The shares of Preferred Stock not redeemed shall remain outstanding and entitled to all the rights and preferences provided herein. At any time thereafter when additional funds of the Corporation are legally available for the redemption of shares of Preferred Stock, such funds will immediately be used to redeem the balance of the shares which the Corporation has become obliged to redeem on any Redemption Date but which it has not redeemed in accordance with the priority set forth in this Section 4(c). At such time as the Redemption Default is cured, the holders of the Preferred Stock shall no longer be entitled to the remedies provided in paragraphs (i) and (ii) above and the size of the Board of Directors shall automatically revert to the size set forth in Section 8(b) and such holders of Preferred Stock shall cause any Directors elected pursuant to clause (c)(i), above, to immediately resign.

(d) The "Fair Market Value" of the shares of Preferred Stock shall be determined in good faith by the Board of Directors (taking into account the Company Value (defined below) and other principles set forth in Section 4(e), below), except that, if the Corporation issues or sells shares of its capital stock to raise cash to finance the redemption of shares of Preferred Stock, then the Fair Market Value of shares of Preferred Stock shall be determined using the valuation of the Corporation resulting from such financing. If the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock electing to be redeemed, voting together as a single class, disagree as to the Board of Directors' determination of Fair Market Value, an appraiser will be chosen by the mutual agreement of the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock electing to be redeemed, voting together as a single class, to make such determination. If the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock electing to be redeemed, voting together as a single class, are unable to select an appraiser by mutual agreement, each of the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock electing to be redeemed, voting together as a single class, shall designate an appraiser acceptable to them, and such designees shall by mutual agreement select another appraiser to make a determination of the Fair Market Value. The determination of such appraiser so selected will be the sole appraisal, and such appraisal will be binding on the Corporation and all holders of shares of Preferred Stock. The appraiser so appointed must be competent and experienced to appraise investments similar to the shares of Preferred Stock and must be unaffiliated with the Corporation or any of the parties affected by such determination of Fair Market Value. The fees and expenses of all appraisers will be paid by the Corporation.

(e) Any appraiser selected in accordance with subsection (d) above will first determine the Company Value of the Corporation as of the day immediately preceding the delivery of the applicable Redemption Notice. "Company Value" shall mean the amount which the Corporation would receive in an all cash sale of all of its assets and businesses as a going concern (free and clear of all liens and after payment of all liabilities) in an arms-length transaction with an unaffiliated third party consummated on the day immediately preceding the delivery of the Redemption Notice. After a determination of the Company Value of the Corporation is made as provided above, the appraiser will determine the Fair Market Value of shares of Preferred Stock by making a calculation reflecting the cash distributions which would be made to the stockholders of the Corporation in accordance with this certificate of incorporation if the Corporation were deemed to have received such Company Value in cash and then distributed the same to the stockholders in accordance with the terms of this certificate of incorporation incident to the liquidation of the Corporation after payment to all of the Corporation's creditors. Any determination of the Fair Market Value of shares of Preferred Stock will fully account for the relative distribution priority of shares of Preferred Stock. In making its determination, the appraiser may not take into account any (i) minority interest discount, (ii) liquidity discount or (iii) control premium. The appraiser shall make its determination of the Fair Market Value within twenty-one (21) days after the date it was retained for such purpose. Immediately upon determining the Fair Market Value of the shares of Preferred Stock, the appraiser will give a written notice to the Corporation and all holders of shares of Preferred Stock who have elected to sell their shares to the Corporation under this Section 4.

5. Sale of Company.

(a) Third Party Transaction. Notwithstanding anything to the contrary contained herein but subject to compliance with the requirements of this Section 5, at any time after December 31, 2010, if a Redemption Default occurs and is not cured for a period of ninety (90) days, then the holders of at least a majority of the then outstanding shares of Preferred Stock electing to be redeemed, voting together as a single class (the "Proposing Stockholders") shall have the right to seek a Sale of the Corporation (as defined below) and produce a third party or parties to acquire (i) all of the issued and outstanding capital stock of the Corporation (whether by merger, consolidation or sale or transfer of stock) or (ii) all or substantially all of the Corporation's assets on a consolidated basis (any such acquisition is referred to as a "Third Party Transaction"); provided, however, that if any of the Proposing Stockholders or any Significant Holder of any such Proposing Stockholders shall be a Significant Holder of the Independent Third Party (as defined below), such Sale of the Corporation to the Independent Third Party shall also require the approval of a Majority of the Qualified Directors (as defined below) and no Sale Notice (as defined below) may be given until such approval is obtained; and provided further, however, that if any of the Proposing Stockholders elects not to seek a Sale of the Corporation, then a Sale of the Corporation may proceed only if the Proposing Stockholders (or any other stockholders joining the Proposing Stockholders who were not initially Proposing Stockholders) at all times during the pursuit of and through the completion of such a Sale of the Corporation hold at least a majority of the voting power of then outstanding Preferred Stock (as a single class). The Proposing Stockholders shall

notify the Corporation and the other Stockholders (the "Other Stockholders") prior to commencing any actions in connection with such transaction and shall first offer (the "First Offer") such shares of Preferred Stock to the Corporation and the Other Stockholders in accordance with the provisions of Section 4 of that certain Second Amended and Restated Stockholders Agreement, dated on or about May 26, 2006, by and among the Corporation and the parties listed on the signature pages thereto, as such agreement may be amended from time to time (the "Stockholders Agreement").

(b) Election. If the Corporation and Other Stockholders do not exercise their right of first offer in full in the time specified in Section 4 of the Stockholders Agreement, the Proposing Stockholders may commence actions in connection with a Sale of the Corporation to an Independent Third Party. Within 45 days of the anticipated consummation of any Sale of the Corporation, the Proposing Stockholders shall deliver written notice to the Corporation and the Other Stockholders setting forth in reasonable detail the terms of the proposed Sale of the Corporation to an Independent Third Party and copies of binding commitments regarding the financing thereof (the "Sale Notice"). If the price to be paid in the proposed Sale of the Corporation is equal to or greater than the price set forth in the First Offer and the terms and conditions of the proposed Sale of the Corporation are no less favorable to the Other Stockholders than those set forth in the First Offer (a "Qualifying Sales Notice"), then the Proposing Stockholders may proceed with the Sale of the Corporation to an Independent Third Party. Within 10 days following receipt of a Qualifying Sales Notice, the Other Stockholders shall deliver to the Corporation and the Proposing Stockholders written notice setting forth such holders' election to participate in such Sale of the Corporation, and if the Sale of the Corporation is structured as a sale of stock, to sell their Stockholder Shares on the terms and conditions set forth in the Sale Notice. If the price to be paid in the proposed Sale of the Corporation is less than the price set forth in the First Offer and the terms and conditions of the proposed Sale of the Corporation are less favorable to the Other Stockholders than those set forth in the First Offer (a "Non-Qualifying Sales Notice"), then the Proposing Stockholders may only proceed with such Sale of the Corporation to an Independent Third Party if they first comply with the provisions of Section 5 of the Stockholders Agreement. If the Corporation and the Stockholders do not exercise their right of first refusal or only partially exercise their right of first offer, the Proposing Stockholders may proceed with the Sale of the Corporation set forth in the Non-Qualifying Sales Notice. Within 10 days following expiration of any right of first refusal rights, the Other Stockholders shall deliver to the Corporation and the Proposing Stockholders written notice setting forth such holders' election to participate in such Sale of the Corporation, and if the Sale of the Corporation is structured as a sale of stock, to sell their Stockholder Shares on the terms and conditions set forth in the Sale Notice. If the Sale of the Corporation is not consummated within 120 days following the expiration of such 10 day period, the Proposing Stockholders shall again comply with the provisions of this Section 5(b).

(c) Definitions. For purposes of this Section 5, the following definitions apply:

(i) “Independent Third Party” means any Person who, immediately prior to the contemplated transaction, does not beneficially own in excess of 5% of the Corporation’s Common Stock on a fully-diluted basis (a “5% Owner”), who is not controlling, controlled by or under common control with any such 5% Owner and who is not the spouse or descendent (by birth or adoption) of any such 5% Owner or a trust for the benefit of such 5% Owner and/or such other Persons.

(ii) “Majority of the Qualified Directors” shall mean a majority of those Directors of the Corporation who (x) do not own, directly or indirectly, more than 1% of the outstanding voting or equity securities of the Independent Third Party (a “Conflicting Interest”) and (y) were not appointed as a Director of the Corporation by a shareholder of the Corporation which (A) holds a Conflicting Interest or (B) is a Significant Holder that holds a Conflicting Interest.

(iii) “Person” shall mean any individual, general partnership, limited partnership, limited liability company, corporation, firm, joint venture, trust, business trust, cooperative or association and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

(iv) “Sale of the Corporation” means the sale of the Corporation to an Independent Third Party or group of Independent Third Parties pursuant to which such party or parties acquire (I) capital stock of the Corporation possessing the voting power under normal circumstances to elect a majority of the Board of Directors (whether by merger, consolidation or sale or transfer of the Corporation’s capital stock) or (II) all or substantially all of the Corporation’s assets determined on a consolidated basis.

(v) “Significant Holder” of a Person is a Person that owns, directly or indirectly, 5% or more of the voting securities or 5% or more of the equity securities of such Person.

(d) Termination of Sale. The rights of Proposing Stockholders set forth in this Section 5 shall terminate in the event that the Redemption Default giving rise to such rights under this Section 5 is cured prior to completion of such Sale of the Company, solely with respect to such Redemption Default. However, the rights under this Section 5 shall again accrue to the Proposing Stockholders in the case of any later occurrence of a Redemption Default.

6. Optional Conversion. The holders of Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing (i) \$0.2519685 in the case of the Series A Preferred, \$0.1277647 in the case of the Series B

Preferred, \$0.1910521 in the case of the Series C Preferred, and \$0.2525653 in the case of the Series D Preferred, plus, in the case of Series D, Series C Preferred and Series B Preferred only, an amount equal to the Series D Accruing Dividends, the Series C Accruing Dividends and the Series B Accruing Dividends (as applicable to each such series, the "Accrual Amount"), to the extent dividends pursuant to Section 2(b), 2(c), or 2(d) (as applicable) above have not been paid, by (ii) the Conversion Price (as defined below) in effect at the time of conversion. As of the time of filing of this Third Amended and Restated Certificate of Incorporation, the Conversion Price for the Series A Preferred shall initially be \$0.2519685, the Conversion Price for the Series B Preferred shall initially be \$0.1277647, the Conversion Price for the Series C Preferred shall initially be \$0.1910521, and the Conversion Price for the Series D Preferred initially shall be \$0.2525653. Such initial Conversion Price, and the rate at which shares of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 4 hereof, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the third full day preceding the date fixed for redemption, unless the redemption price is not paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation of the Corporation, the Conversion Rights shall terminate at the close of business on the first full day preceding the date fixed for the payment of any amounts distributable on liquidation to the holders of Preferred Stock.

(b) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective Conversion Price applicable to the shares of Preferred Stock being converted.

(c) Mechanics of Conversion.

(i) In order for a holder of Preferred Stock to convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock, at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his or its attorney duly authorized in writing. The date of receipt of such certificates and notice by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) shall be the conversion date ("Conversion Date"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be

deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Date, issue and deliver at such office to such holder of Preferred Stock, or to his or its nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled, together with cash in lieu of any fraction of a share.

(ii) The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

(iii) Upon any such conversion, no adjustment to the Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion. In lieu of receiving shares of Common Stock upon conversion of shares of Series B Preferred in respect of the Accrual Amount, if elected in writing by the holders of 60% of the then outstanding voting power of the Series B Preferred, the Company will pay the Accrual Amount in cash. In lieu of receiving shares of Common Stock upon conversion of shares of Series C Preferred in respect of the Accrual Amount, if elected in writing by the holders of a majority of the then outstanding voting power of Series C Preferred, the Company will pay the Accrual Amount in cash. In lieu of receiving shares of Common Stock upon conversion of shares of Series D Preferred in respect of the applicable Accrual Amount, if elected in writing by the holders of a majority of the then outstanding voting power of Series D Preferred, the Company will pay the Accrual Amount in cash.

(iv) All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares, including the rights, if any, to receive notices and to vote, shall immediately cease and terminate on the Conversion Date, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor and payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and shall not be reissued, and the Corporation (without the need for stockholder action) may from time to time take such appropriate action as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

(v) The Corporation shall pay any and all issue and other taxes (excluding any income, capital gains or other similar taxes) that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 6. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the

issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(d) Adjustments to Conversion Price for Diluting Issues:

(i) Special Definitions. For purposes of this Section 6, the following definitions shall apply:

(A) "Option" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire shares of Common Stock or Convertible Securities.

(B) "Original Issue Date" shall mean the date on which the first share of Series D Preferred was issued.

(C) "Convertible Securities" shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for shares of Common Stock, but excluding Options.

(D) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsection 6(d)(iii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than:

(I) shares of Common Stock issued or issuable upon conversion or exchange of any Convertible Securities or exercise of any Options outstanding on the Original Issue Date;

(II) shares of Series D Preferred or shares of Common Stock issued or issuable upon conversion of shares of Series D Preferred;

(III) shares of Common Stock issued or issuable by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 6(e), 6(f) or 6(g) below; or

(IV) up to 20,301,690 shares of Common Stock (of which at least 11,418,055 shares of Common Stock will be available for future grant as of the Original Issue Date)(or Options with respect thereto) (subject in either case to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization affecting such shares), issued or issuable to employees or Directors of, or consultants to, the Corporation or its subsidiaries pursuant to a plan or arrangement approved by the Board of Directors of the Corporation and the holders of at least a majority of the then outstanding Preferred Stock, voting together as a single class; *provided, however,* that shares of Common Stock (i) not issued pursuant to the rights, agreements, option or warrants ("Unexercised Options") as a result of the termination of such Unexercised Options or (ii) reacquired by the Company from employees, directors

or consultants at cost (or the lesser of cost or fair market value) pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company, shall not be deemed issued pursuant to this Section 6(d)(IV), but shall continue to be available for future grant or issuance pursuant to this exclusion.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price or the number of shares of Common Stock into which the Preferred Stock is convertible shall be made, by adjustment in the applicable Conversion Price thereof: (a) unless the consideration per share (determined pursuant to Subsection 6(d)(v)) for an Additional Share of Common Stock issued or deemed to be issued by the Corporation is less than the Conversion Price applicable to such Series of Preferred Stock in effect immediately prior to the issue of such Additional Shares, or (b) if prior to such issuance, the Corporation receives written notice from the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock, voting together as a single class, agreeing that no such adjustment shall be made to the Conversion Price for any series of Preferred Stock as the result of the issuance of Additional Shares of Common Stock.

(iii) Issue of Securities Deemed Issue of Additional Shares of Common Stock. If the Corporation at any time or from time to time after the Original Issue Date shall issue any Options (excluding Options covered by Subsection 6(d)(i)(D)(IV) above) or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date, provided that Additional Shares of Common Stock shall not be deemed to have been issued with respect to a series of Preferred Stock unless the consideration per share (determined pursuant to Subsection 6(d)(v) hereof) of such Additional Shares of Common Stock would be less than the Conversion Price applicable to such Series of Preferred Stock, in effect immediately prior to such issue, or such record date, as the case may be, and provided further that in any such case in which Additional Shares of Common Stock are deemed to be issued:

(A) No further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities;

(B) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any increase or decrease in the consideration payable to the Corporation, then upon the exercise, conversion or exchange thereof, the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based

thereon, shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities;

(C) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised, converted or exchanged prior to such change been made upon the basis of such change and the Conversion Price should be further equitably readjusted to account for the conversion by any holder during the period such Conversion Price was overadjusted under 6(d)(iii);

(D) In the event of any change in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security, including, but not limited to, a change resulting from the anti-dilution provisions thereof, the Conversion Price then in effect shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment which was made upon the issuance of such Option or Convertible Security not exercised, converted or exchanged prior to such change been made upon the basis of such change; and

(E) No readjustment pursuant to clause (B) or (D) above shall have the effect of increasing the Conversion Price to an amount which exceeds the lower of (i) the Conversion Price on the original adjustment date, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock between the original adjustment date and such readjustment date.

In the event the Corporation, after the Original Issue Date, amends the terms of any such Options or Convertible Securities (whether such Options or Convertible Securities were outstanding on the Original Issue Date or were issued after such Original Issue Date), then such Options or Convertible Securities, as so amended, shall not be deemed to have been issued after the Original Issue Date unless such amendment affects the number of shares of Common Stock or Convertible Securities issuable or the consideration payable in connection with the issuance of such shares of Common Stock or Convertible Securities, in which case such Options or Convertible Securities, as so amended, shall be deemed to have been issued after the Original Issue Date and the provisions of this Subsection 6(d)(iii) shall apply.

(iv) Adjustment of Conversion Price of Preferred Stock Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Original Issue Date issue or sell Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 6(d)(iii)), without consideration or for a consideration per share less than the Conversion Price applicable to a Series of Preferred Stock in effect immediately prior to such issuance or sale, then and in such event, such Conversion Price shall be reduced,

concurrently with such issue, to a price determined by multiplying such Conversion Price in effect immediately prior to such issuance or sale by a fraction:

(A) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the Aggregate Consideration (as defined below) received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such then-existing Conversion Price, and

(B) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as determined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock outstanding, plus (B) the number of shares of Common Stock into which the then outstanding shares of Preferred Stock could be converted if fully converted on the day immediately preceding the given date, plus (C) the number of shares of Common Stock which are issuable upon the exercise or conversion of all other Options or Convertible Securities outstanding on such date.

(v) Determination of Consideration. For purposes of this Subsection 6(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) Cash and Property: Such consideration shall:

(I) insofar as it consists of cash, be computed at the aggregate of cash received by the Corporation, excluding amounts paid or payable for accrued interest or dividends;

(II) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors; and

(III) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (I) and (II) above, as determined in good faith by the Board of Directors.

(B) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 6(d)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(e) Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Original Issue Date for a series of Preferred Stock effect a subdivision of the outstanding Common Stock, the Conversion Price for such series then in effect immediately before that subdivision shall be proportionately decreased. If the Corporation shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock, the Conversion Price for such series then in effect immediately before the combination shall be proportionately increased. Any adjustment under this paragraph shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time, or from time to time after the Original Issue Date for a series of Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Conversion Price for such series then in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

(i) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(ii) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution;

provided, however, if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this paragraph as of the time of actual payment of such dividends or distributions; and provided further, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(g) Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than shares of Common Stock), then and in each such event provision shall be made so that the holders of Preferred Stock shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had the Preferred Stock been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the conversion date, retained such securities receivable by them as aforesaid during such period, giving application to all adjustments called for during such period under this paragraph with respect to the rights of the holders of the Preferred Stock; and provided, however, that no such adjustment shall be made if the holders of Preferred Stock simultaneously receive a dividend or other distribution of such securities in an amount equal to the amount of such securities as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

(h) Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 3(e), if there shall occur any reorganization, recapitalization, consolidation or merger involving the Corporation in which the Common Stock is converted into or exchanged for securities, cash or other property (other than a transaction covered by paragraphs (e), (f) or (g) of this Section 6), then, following any such reorganization, recapitalization, consolidation or merger, each share of Preferred Stock shall be convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors) shall be made in the application of the provisions in this Section 6 set forth with respect to the rights and interest thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 6 (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Preferred Stock.

(i) [Intentionally Omitted].

(j) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 6, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, but no more than once per fiscal quarter, furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Preferred Stock.

(k) Notice of Record Date. In the event:

(i) the Corporation shall take a record of the holders of its Common Stock (or other stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for a purchase any shares of stock of any class or any other securities, or to receive any other right; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another corporation (other than a consolidation or merger in which the Corporation is the surviving entity and its Common Stock is not converted into or exchanged for any other securities or property), or any transfer of all or substantially all of the assets of the Corporation; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will mail or cause to be mailed to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up. Such notice shall be mailed at least 20 days prior to the record date or effective date for the event specified in such notice.

7. Mandatory Conversion.

(a) Upon the closing of the sale of shares of Common Stock, at a price to the public of at least three (3) times the original purchase price for the Series D Preferred (subject to appropriate adjustment for stock splits, stock dividends, combinations and other similar recapitalizations affecting such shares), in a firm commitment underwritten public offering resulting in at least \$25,000,000 of gross proceeds to the Corporation (the "Mandatory Conversion Date"), all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate and the number of authorized shares of Preferred Stock shall be automatically reduced by the number of shares of Preferred Stock so converted.

(b) All holders of record of shares of Preferred Stock shall be given written notice of the Mandatory Conversion Date and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 7. Such notice need not be given in advance of the occurrence of the Mandatory Conversion Date. Such notice shall be sent by first class or registered mail, postage prepaid or by federal express or other overnight service, to each record holder of Preferred Stock at such holder's address last shown on the records of the transfer agent for the Preferred Stock (or the records of the Corporation, if it serves as its own transfer agent). Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his or its certificate or certificates for all such shares to the Corporation at the place designated in such notice, and shall thereafter receive certificates for the number of shares of Common Stock to which such holder is entitled pursuant to this Section 7. On the Mandatory Conversion Date, all outstanding shares of Preferred Stock shall be deemed to have been converted into shares of Common Stock, which shall be deemed to be outstanding of record, and all rights with respect to the Preferred Stock so converted, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock) will terminate, except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor, to receive certificates for the number of shares of Common Stock into which such Preferred Stock has been converted, and payment of any declared but unpaid dividends thereon. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his or its attorney duly authorized in writing. As soon as practicable after the Mandatory Conversion Date and the surrender of the certificate or certificates for Preferred Stock, the Corporation shall cause to be issued and delivered to such holder, or on his or its written order, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof and cash as provided in Subsection 6(b) in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion.

(c) All certificates evidencing shares of Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the Mandatory Conversion Date, be deemed to have been retired and canceled and the shares of Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to

surrender such certificates on or prior to such date. Such converted Preferred Stock may not be reissued, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

8. Voting Rights; Directors.

(a) With regard to any vote or consent of any class or series of the Corporation's capital stock that includes any class or series of Preferred Stock as set forth in this Certificate of Incorporation or any agreement or as otherwise required by law, except as otherwise provided herein or by law, the holder of each share of Preferred Stock shall have the right to the number of votes as is equal to the number of shares of Common Stock into which such Preferred Stock could then be converted (but excluding any shares issuable pursuant to Section 6(c)(iii) with respect to any Accrual Amount), and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation. Except as may be otherwise provided in this Certificate of Incorporation or by law, the Preferred Stock shall vote together with all other classes and series of stock of the Corporation (including the Common Stock) as a single class on all actions to be taken by the stockholders of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Except as otherwise provided herein, all changes to the size and composition of the Board of Directors shall be determined by the Board of Directors unless the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock, voting together as a single class, affirmatively vote against such action, provided, however, that any change to the size and composition of the Board of Directors shall in no manner alter or amend the rights to elect directors set forth in this Section 8, provided, further, that any vacancies in the Board of Directors upon any such change in the size and composition of the Board of Directors may be filled by a majority of the directors then in office. Except as provided below, the number of Directors which shall constitute the entire Board of Directors of the Corporation shall be five (5), who shall be elected as follows:

(i) The holders of record of at least a majority of the outstanding shares of Common Stock, voting as a separate class, shall be entitled to elect one Director of the Corporation (the "Common Directorship"). A vacancy in a Common Directorship shall be filled solely by the vote of the holders of at least a majority of the outstanding shares of Common Stock, voting separately as a class, provided that such nominee shall be nominated by the Founders (subject to the foregoing provisions of this Section 8(b)(i)), and no holder of Preferred Stock, in its capacity as such shall vote to remove any Director elected exclusively by the holders of Common Stock.

(ii) The holders of record of at least a majority of the outstanding shares of Series A Preferred and Series B Preferred Stock, voting together as a single class, shall be entitled to elect one Director of the Corporation (the "Series A/B Directorship"). A vacancy in the Series A/B Directorship shall be filled solely by the vote of the holders of record of at least a majority of outstanding shares of Series A Preferred and Series B Preferred Stock, voting together as a single class, by a designee selected as provided above, and no holder of Common Stock, Series D Preferred, or Series C Preferred in its capacity as such shall vote to remove any Director elected exclusively by the holders of Series A Preferred and Series B Preferred Stock.

(iii) The holders of record of at least a majority of the outstanding shares of Series C Preferred, voting as a separate class, shall be entitled to elect one Director of the Corporation (the "Series C Directorship"). A vacancy in any Series C Directorship shall be filled solely by the vote of the holders of record of a majority of the outstanding shares of Series C Preferred by a designee selected as provided above, and no holder of Common Stock, Series D Preferred, Series B Preferred or Series A Preferred in its capacity as such shall vote to remove any Director elected exclusively by the holders of Series C Preferred.

(iv) The holders of record of at least a majority of the outstanding shares of Series D Preferred, voting as a separate class, shall be entitled to elect one Director of the Corporation (the "Series D Directorship"). A vacancy in any Series D Directorship shall be filled solely by the vote of the holders of record of at least a majority of the outstanding shares of Series D Preferred by a designee selected as provided above, and no holder of Common Stock, Series C Preferred, Series B Preferred or Series A Preferred in its capacity as such shall vote to remove any Director elected exclusively by the holders of Series D Preferred.

(v) The holders of the Preferred Stock and the Common Stock, voting together as a single class, shall be entitled to elect all other directors of the Corporation.

Until a vacancy in any Director position is filled, the affairs of the Corporation shall be conducted by the remaining Directors then in office. At any meeting held for the purpose of nominating or electing Directors, the presence in person or by proxy of the holders of at least a majority of the class or series of capital stock which has the exclusive right to elect a Director hereunder shall constitute a quorum for the election or nomination of Directors by such class or series. The provisions for the elections of Directors set forth above shall be subject to the provisions of Section 4(c) above.

(c) The Preferred Stock will be entitled to the protective provisions specified below:

(1) At any time when shares of Series A Preferred are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by this Certificate of Incorporation, and in addition

to any other vote required by law or this Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then-outstanding shares of the Series A Preferred consenting or voting (as the case may be) as a single separate class, the Corporation will not effect or validate any of the following actions (whether by merger or consolidation, or otherwise) and the Corporation will not permit any subsidiary of the Corporation to effect or validate any of the following actions (whether by merger or consolidation, or otherwise):

(i) Any amendment, alteration, waiver or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation) that alters or changes the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Series A Preferred Stock in a manner adverse to the holders thereof;

(ii) Any increase in the authorized number of shares of Series A Preferred;

(iii) Redeem or otherwise acquire any shares of any class or series of stock junior to the Series A Preferred other than shares of Common Stock repurchased at cost upon termination of a stockholder's employment with the Corporation; or

(iv) Any reclassification of any shares of any existing class or series of stock junior to the Series A Preferred to have rights, preferences and privileges on parity with or senior to the Series A Preferred with respect to dividends, liquidation preference, or redemption; or any increase in the authorized or designated number of shares of any such reclassified series or class. For the sake of clarification, the creation of a new series of Preferred Stock senior to all existing Preferred Stock requires only the vote of at least a majority of the outstanding Preferred Stock, as set forth in Section 8(c)(5)(ii) below.

(2) At any time when shares of Series B Preferred are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or this Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then-outstanding shares of the Series B Preferred consenting or voting (as the case may be) as a single separate class, the Corporation will not effect or validate any of the following actions (whether by merger or consolidation, or otherwise) and the Corporation will not permit any subsidiary of the Corporation to effect or validate any of the following actions (whether by merger or consolidation, or otherwise):

(i) Any amendment, alteration, waiver or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation) that alters or changes the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Series B Preferred Stock in a manner adverse to the holders thereof;

(ii) Any increase in the authorized number of shares of Series B Preferred;

(iii) Redeem or otherwise acquire any shares of any class or series of stock junior to the Series B Preferred other than shares of Common Stock repurchased at cost upon termination of a stockholder's employment with the Corporation or as expressly authorized in paragraph 4 hereof; or

(iv) Any reclassification of any shares of any existing class or series of stock junior to the Series B Preferred to have rights, preferences and privileges on parity with or senior to the Series B Preferred with respect to dividends, liquidation preference, or redemption; or any increase in the authorized or designated number of shares of any such reclassified series or class. For the sake of clarification, the creation of a new series of Preferred Stock senior to all existing Preferred Stock requires only the vote of at least a majority of the outstanding Preferred Stock, as set forth in Section 8(c)(5)(ii) below.

(3) At any time when shares of Series C Preferred are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or this Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then-outstanding shares of the Series C Preferred consenting or voting (as the case may be) as a single separate class, the Corporation will not effect or validate any of the following actions (whether by merger or consolidation, or otherwise) and the Corporation will not permit any subsidiary of the Corporation to effect or validate any of the following actions (whether by merger or consolidation, or otherwise):

(i) Any amendment, alteration, waiver or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation) that alters or changes the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Series C Preferred Stock in a manner adverse to the holders thereof;

(ii) Any increase in the authorized number of shares of Series C Preferred;

(iii) Redeem or otherwise acquire any shares of any class or series of stock junior to the Series C Preferred other than shares of Common Stock repurchased at cost upon termination of a stockholder's employment with the Corporation or as expressly authorized in paragraph 4 hereof; or

(iv) Any reclassification of any shares or any existing class or series of stock junior to the Series C Preferred to have rights, preferences and privileges on parity with or senior to the Series C Preferred with respect to dividends, liquidation preference, or redemption; or any increase in the authorized or designated number of shares of any such reclassified series or class. For the sake of clarification, the creation of a new series

of Preferred Stock senior to all existing Preferred Stock requires only the vote of at least a majority of the outstanding Preferred Stock, as set forth in Section 8(c)(5)(ii) below.

(4) At any time when shares of Series D Preferred are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or this Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then-outstanding shares of the Series D Preferred consenting or voting (as the case may be) as a single separate class, the Corporation will not effect or validate any of the following actions (whether by merger or consolidation, or otherwise) and the Corporation will not permit any subsidiary of the Corporation to effect or validate any of the following actions (whether by merger or consolidation, or otherwise):

(i) Any amendment, alteration, waiver or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation) that alters or changes the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Series D Preferred Stock in a manner adverse to the holders thereof;

(ii) Any increase in the authorized number of shares of Series D Preferred or the issuance of any authorized but then unissued shares of Series D Preferred;

(iii) Redeem or otherwise acquire any shares of any class or series of stock junior to the Series D Preferred other than shares of Common Stock repurchased at cost upon termination of a stockholder's employment with the Corporation or as expressly authorized in paragraph 4 hereof; or

(iv) Any reclassification of any shares of any existing class or series of stock junior to the Series D Preferred to have rights, preferences and privileges on parity with or senior to the Series D Preferred with respect to dividends, liquidation preference, or redemption; or any increase in the authorized or designated number of shares of any such reclassified series or class. For the sake of clarification, the creation of a new series of Preferred Stock senior to all existing Preferred Stock requires only the vote of at least a majority of the outstanding Preferred Stock, as set forth in Section 8(c)(5)(ii) below.

(5) At any time when shares of Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law or this Certificate of Incorporation, without the written consent or affirmative vote of the holders of at least a majority of the then-outstanding shares of the Preferred Stock (voting together as a single class given in writing or by vote at a meeting, consenting or voting (as the case may be), the Corporation will not effect or validate any of the following actions (whether by merger or consolidation, or otherwise) and the Corporation will not permit any subsidiary of the Corporation to effect

or validate any of the following actions (whether by merger or consolidation, or otherwise):

(i) Any amendment, alteration, waiver or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Corporation (including any filing of a Certificate of Designation);

(ii) Any authorization, issuance or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Corporation having rights, preferences and privileges on a parity with or senior to the Series D Preferred Stock with respect to dividends, liquidation preference, or redemption;

(iii) Effect (A) a merger or consolidation, (B) the sale or exclusive license of all or substantially all its assets, or (C) dissolve or liquidate;

(iv) Any increase or decrease in the authorized number of members of the Board of Directors;

(v) Any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock (other than dividends payable solely in shares of Common Stock or as required pursuant to Section 1 above); or

(vi) Any increase in the number of shares reserved for issuance or issued under the Corporation's 2006 Equity Incentive Plan, 2004 Employee Stock Plan, 2000 Stock Option Plan, 2001 Stock Option Plan, or such other stock purchase or stock option plan or other arrangements with respect to the issuance of shares to employees, officers, directors or consultants that are approved by the Board of Directors.

FIFTH: In furtherance of and not in limitation of powers conferred by statute, it is further provided: (a) Election of Directors need not be by written ballot, and (b) subject to the power of the stockholders to amend or repeal the Bylaws, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

SIXTH: Except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of Directors for breaches of fiduciary duty, no Director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a Director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment.

SEVENTH: The Corporation shall, to the maximum extent permitted from time to time under the laws of the State of Delaware, indemnify and upon request shall advance expenses to any person who is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit, proceeding or claim, whether civil,

criminal, administrative or investigative, by reason of the fact that he is or was or has agreed to be a director or officer of the Corporation or while a director or officer is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of any corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against any and all expenses (including attorney's fees and expenses), judgments, fines, penalties and amounts paid in settlement or incurred in connection with the investigation, preparation to defend or defense of such action, suit, proceeding or claim; provided, however, that the foregoing shall not require the Corporation to indemnify or advance expenses to any person in connection with any action, suit, proceeding, claim or counterclaim initiated by or on behalf of such person. Such indemnification shall not be exclusive of other indemnification rights arising under any by-law, agreement, vote of directors or stockholders or otherwise and shall inure to the benefit of the heirs and legal representatives of such person. No amendment or repeal of this Article SEVENTH shall apply to or adversely affect any right or protection of a director or officer of the Corporation with respect to any act or omission of such director occurring prior to such amendment or repeal.


EIGHTH: In the event that a director of the Corporation who is also a partner or employee of a holder of Preferred Stock, or any of its affiliates, acquires knowledge of a potential transaction or matter which may be a corporate opportunity for both the Corporation and such holder of Preferred Stock, or any of its affiliates, such director shall to the fullest extent permitted by law have fully satisfied and fulfilled his fiduciary duty with respect to such corporate opportunity, and the Corporation to the fullest extent permitted by law waives any claim that such business opportunity constituted a corporate opportunity that should have been presented to the Corporation or any of its affiliates, if such director acts in a manner consistent with the following policy: a corporate opportunity offered to any person who is a director of the Corporation, and who is also a partner or employee of a holder of Preferred Stock, or any of its affiliates, shall belong to such holder of Preferred Stock, or any of its affiliates, unless such opportunity was expressly offered to such person solely in his or her capacity as a director of the Corporation.

NINTH: Subject to the limitations expressly set forth in this Certificate of Incorporation, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

* * * * *

IN WITNESS WHEREOF, the Corporation has caused this Third Amended and Restated Certificate of Incorporation to be signed by its President as of May 25, 2006.

SERVICEBENCH, INC.

By: 
Michael Dering, President

**CERTIFICATE OF AMENDMENT
OF
THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
SERVICEBENCH, INC.**

SERVICEBENCH, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "**Company**"), does hereby certify as of this 15th day of January, 2008:

FIRST: The name of the Company is **SERVICEBENCH, INC.**

SECOND: The date of filing the original Certificate of Incorporation of this Company with the Secretary of State of the State of Delaware was April 14, 2000.

THIRD: The Board of Directors of the Company, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware, adopted resolutions amending the Third Amended and Restated Certificate of Incorporation of the Corporation as follows:

1. Article Fourth, Part B, section 3, shall be amended by adding section 3(g) to read as follows:

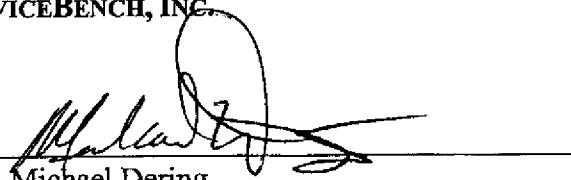
“(g) Notwithstanding anything to the contrary in this Certificate of Incorporation (i) no provisions in the Corporation’s certificate of incorporation that require that notice be given to the holders of shares of one or more series or classes of the Corporation’s preferred stock or common stock with respect to a merger (including without limitation those set forth in Article Fourth, Part B, sections 3(f)(iii), 6(k) and 8) shall apply to the merger contemplated by that certain Agreement and Plan of Merger among the Company, N.E.W. Customer Service Companies, Inc., SB Acquisition Company, Inc. and certain other parties thereto, dated January 15, 2008 (the “**NEW Merger Agreement**”), (ii) at the effective time of the merger contemplated by the **NEW Merger Agreement**, each share of each class or series of the Corporation’s preferred stock and common stock shall convert into the right to receive the consideration set forth in the **Merger Agreement**, and (iii) the portions of the consideration withheld and placed into escrow, shall be in the manner and amount provided in the **NEW Merger Agreement**. In the event that the **NEW Merger Agreement** is terminated prior to the consummation of the transactions contemplated therein, the provisions of this Section B.3(g) shall be of no further force or effect.”

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, SERVICEBENCH, INC. has caused this Certificate of Amendment to be executed by its Chief Executive Officer as of the date first written above.

SERVICEBENCH, INC.

By:

A handwritten signature in black ink, appearing to read "Michael Dering", is written over a horizontal line. The signature is stylized and includes a large loop at the end.

Michael Dering
Chief Executive Officer

CERTIFICATE OF MERGER

OF

SB ACQUISITION COMPANY, INC.

WITH AND INTO

SERVICEBENCH, INC.

Pursuant to Section 251 of the General
Corporation Law of the State of Delaware

The undersigned, ServiceBench, Inc. ("the Company"), does hereby certify that the following facts relating to the merger (the "Merger") of SB Acquisition Company, Inc. (the "Merger Sub") with and into the Company are true and correct:

1. The constituent business corporations participating in the Merger herein certified are:

(i) ServiceBench, Inc., a corporation duly incorporated and existing under the laws of the State of Delaware; and

(ii) SB Acquisition Company, Inc., a corporation duly incorporated and existing under the laws of the State of Delaware.

2. An Agreement and Plan of Merger (the "Agreement") has been approved, adopted, certified, executed, and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of Section 251 of the General Corporation Law of the State of Delaware.

3. This Certificate of Merger (this "Certificate") shall be effective at such time as this Certificate is filed with the Secretary of State of the State of Delaware (the "Effective Time").

4. Upon the Effective Time, the Company shall be the surviving corporation (the "Surviving Corporation") of the Merger and the name of the Surviving Corporation shall be ServiceBench, Inc.

5. At the Effective Time, the Certificate of Incorporation of the Surviving Corporation shall be amended and restated to read in its entirety as set forth in Exhibit A hereto, until further amended and changed in accordance with the provisions of the General Corporation Law of the State of Delaware.

6. At the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of each of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

7. The executed Agreement between the aforesaid constituent corporations is on file at the office of the aforesaid Surviving Corporation, the address of which is as follows: 3877 Fairfax Ridge Road, Suite 205, Central Tower, Fairfax, VA 22030.

8. A copy of the aforesaid Agreement will be furnished by the Surviving Corporation, upon request, and without cost, to any stockholder of each of the aforesaid constituent corporations.

Dated: January 5, 2008

SERVICEBENCH, INC.

By: 

Name: Michael Dering

Title: CEO

Exhibit A

Amended and Restated Certificate of Incorporation of the Surviving Corporation

See attached.

STATE of DELAWARE
AMENDED AND RESTATED CERTIFICATE of INCORPORATION
of
SERVICEBENCH, INC.

FIRST: The name of the corporation (hereinafter called the "Corporation") is

ServiceBench, Inc.

SECOND: The address, including street, number, city, zip code, and county, of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, Zip Code 19808, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is One Hundred (100) shares of Common Stock, \$0.001 par value per share.

FIFTH: The incorporator of the Corporation is M. Christine Sinelli, whose mailing address is 100 South Charles Street, 15th Floor, Baltimore, Maryland 21201-2773.

CERTIFICATE OF CHANGE OF LOCATION OF REGISTERED OFFICE
AND OF REGISTERED AGENT

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is ServiceBench, Inc.

2. The registered office of the Corporation within the State of Delaware is hereby changed to 160 Greentree Drive, Suite 101, City of Dover 19904, County of Kent.

3. The registered agent of the Corporation within the State of Delaware is hereby changed to National Registered Agents, Inc., the business office of which is identical with the registered office of the corporation as hereby changed.

4. The Corporation has authorized the changes hereinbefore set forth by resolution of its Board of Directors.

Signed on February 20, 2009

/s/ Sabrina Tillapaugh
Sabrina Tillapaugh, Vice President

STATE OF DELAWARE
CERTIFICATE OF CONVERSION
FROM
A CORPORATION TO A
LIMITED LIABILITY COMPANY
PURSUANT TO
SECTION 18-214 OF THE LIMITED LIABILITY ACT
AND
SECTION 266 OF THE GENERAL CORPORATION LAW

- 1.) The jurisdiction where the Corporation first incorporated is Delaware.
- 2.) The jurisdiction immediately prior to filing this Certificate is Delaware.
- 3.) The date the Corporation first incorporated is April 14, 2000.
- 4.) The name of the Corporation immediately prior to filing this Certificate is ServiceBench, Inc.
- 5.) The name of the Delaware Limited Liability Company as set forth in the Certificate of Formation is ServiceBench, LLC.
- 6.) This Certificate of Conversion shall have a delayed effective date and shall not become effective until 12:01 a.m. Eastern Standard Time on January 1, 2012.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on December
16, 2011.

By: 

Name: David N. Bosserman

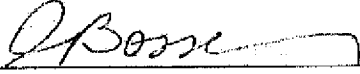
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STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF
SERVICEBENCH, LLC

This Certificate of Formation of ServiceBench, LLC is to be filed with the Secretary of State of the State of Delaware pursuant to Section 18-201 of the Delaware Limited Liability Company Act.

1. The name of the limited liability company is ServiceBench, LLC.
2. The name and mailing address of the initial registered office and the registered agent for service of process of the limited liability company in the State of Delaware are as follows: National Registered Agents, Inc., 160 Greentree Drive, Suite 101, in the City of Dover, Kent County, Delaware 19904.
3. This Certificate of Formation shall have a delayed effective date and shall not be effective until 12:01 a.m. Eastern Standard Time on January 1, 2012.

In Witness Whereof, the undersigned has executed this Certificate of Formation this December 16, 2011.

By: 
Name: David N. Bosserman
Title: Treasurer and Director